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Empire Ambulance and Ambulette, Inc. d/b/a Freedom A-1 Ambulance Service and Local 531, International Brotherhood of Teamsters, AFL-CIO. Case 2-CA-30566

September 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on July 1, 1997, the General Counsel of the National Labor Relations Board issued a complaint on December 24, 1997 against Empire Ambulance and Ambulette, Inc. d/b/a Freedom A-1 Ambulance Service, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 28, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On August 31, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 3, 1998, notified the Respondent that unless an answer were received by June 10, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation, with an office and place of business located at 123 Plainfield Avenue, Bedford Hills, New York, provides ambulance and ambulette services to hospitals and nursing homes in the Westchester County area. Annually,

the Respondent, in the course and conduct of its business operations described above, derives gross revenues in excess of \$250,000 and purchases and receives goods and materials valued in excess of \$50,000 directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 531, International Brotherhood of Teamsters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, herein called the unit, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time drivers, emergency medical technicians and paramedics, employed by Respondent at its 123 Plainfield Avenue, Bedford Hills, New York facility.

Excluded: Office clerical employees, and guards, professional employees and supervisors as defined in the Act.

At all material times, the Union was the designated exclusive collective-bargaining representative of the unit and was recognized as the representative by the Respondent. At all material times, the Union, by virtue of Section 9(a) of the Act, was the exclusive representative of the unit of employees of the Respondent described above, for the purposes of collective bargaining with respect to rates of pay, wages, hours and other terms and conditions of employment.

Around July and August 1996, the Respondent and the Union reached a verbal agreement whereby the Respondent agreed to make contributions, on behalf of unit employees, to the Local 531 Sick & Welfare Fund. From around August through around December 1996, the Respondent implemented the agreement described above, and made contributions, on behalf of unit employees, to the Local 531 Sick & Welfare Fund. However, from approximately January through August 1997, the Respondent failed and refused to make the contributions to the Local 531 Sick & Welfare Fund. These contributions are a fringe benefit which relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purpose of collective bargaining. Nevertheless, the Respondent failed and refused to make the contributions without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By failing to make required contributions to the Local 531 Sick & Welfare Fund, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representa-

tive of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to make contributions to the Local 531 Sick & Welfare Fund on behalf of unit employees from about January to about August 1997, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216, fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the agreed upon contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

ORDER

The National Labor Relations Board orders that the Respondent, Empire Ambulance and Ambulette, Inc. d/b/a Freedom A-1 Ambulance Service, Bedford Hills, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Local 531, International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the unit, by failing to make required contributions to the Local 531 Sick & Welfare Fund on behalf of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the employees in the following unit whole for its failure to make required contributions to the Local 531 Sick & Welfare Fund by making all contributions that have not been made from about January to about August 1997, and by reimbursing the unit employees for

any expenses incurred as a result of the failure to make such contributions, as set forth in the remedy section of this decision:

Included: All full-time and regular part-time drivers, emergency medical technicians and paramedics, employed by Respondent at its 123 Plainfield Avenue, Bedford Hills, New York facility.

Excluded: Office clerical employees, and guards, professional employees and supervisors as defined in the Act.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Bedford Hills, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1998

Sarah M. Fox,

Member

Wilma B. Liebman,

Member

Peter J. Hurtgen,

Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THENATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively with Local 531, International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the unit, by failing to make required contributions to the Local 531 Sick & Welfare Fund on behalf of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our employees in the following unit whole for our failure to make required contributions to the Local 531 Sick & Welfare Fund by making all contributions that have not been made from about January to about August 1997, and by reimbursing the unit employees for any expenses incurred as a result of our failure to make such contributions, with interest:

Included: All full-time and regular part-time drivers, emergency medical technicians and paramedics, employed by us at our 123 Plainfield Avenue, Bedford Hills, New York facility.

Excluded: Office clerical employees, and guards, professional employees and supervisors as defined in the Act.

EMPIRE AMBULANCE AND AMBULETTE, INC.
D/B/A FREEDOM A-1 AMBULANCE SERVICE